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ABSTRACT

The focus of this guide is on primary and secondary education law, both public and private. The guide is designed to assist the inexperienced education legal researcher through an efficient research process, making use of the variety of legal resources available in today's law libraries. The guide's introduction offers a brief overview of education law as a field of legal authority. "Beginning Your Research," Step 1 discusses a variety of general reference materials and strategies that may be used in identifying pertinent legal resources. Step 2, "Narrowing Your Search" suggests common areas of research in education law and controlling authorities therein. It also points to additional resources that may be of particular use for finding specific points of law and on-line databases that are available for similar use. Step 3, "Fine Tuning Your Search," recommends non-traditional resource tools and final steps to take in concluding the search. Appendices include copies of tables and directories suggested for use in the main text. (LH)

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EDUCATION LAW RESEARCH

- A How to Guide for the Have to Attorney -

Joseph R. Price

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EDUCATION LAW RESEARCH

- A How to Guide for the Have to Attorney -

Joseph R. Price

Professor Kent Olson
Advanced Legal Research
Spring 1995

To separate [black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . . We conclude that in the field of public education the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal.

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954) (Chief Justice Earl Warren writing for the majority in one of the single most renowned education law decisions of this century).

Remember the good ole' days when finding something in the library was as simple as pulling open a card catalogue drawer? Today, if there is a card catalogue at all, it is probably hidden in a corner somewhere, lost amid the ominous shelves that stretch out in all directions. In fact, the first thing you may want to find in the modern library is a guide to finding things in the library. This is no doubt doubly true for the law library. The introduction of the term "law" is a virtual guarantee that the simple will become complex and the sublime, surreal. No doubt some would say this is by design and certainly in the very best interest of a profession whose existence is assured only because the average person can't make heads or tails of the law.[1]

Cynicism aside, legal research is quite frequently a time consuming and frustrating task. Fortunately, with a little planning, you can decrease both the time you spend searching and your level of frustration. It is the purpose of this document, within the context of education law, to help with this preparation. The guide is designed to aid the inexperienced education law researcher proceed through an efficient research process, making use of a variety of the legal resources available in today's law library. It is important to note at the outset that the focus of this guide is primary and secondary education, both public and private. Higher education, while similar in many regards, is nevertheless a beast of another sort, deserving of its own guide.

The guide is organized into four parts. The INTRODUCTION offers a brief overview

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[1] Benjamin N. Cardozo captured the essence of it stating "Was there ever such a profession as ours, anyhow? We speak of ourselves as practicing law, as teaching it, as deciding it; and not one of us can say what law means." BENJAMIN N. CARDOZO, SELECTED WRITINGS OF BENJAMIN NATHAN CARDOZO, 1947.

of education law as a field of legal authority. STEP 1: BEGINNING YOUR RESEARCH, discusses a variety of general reference materials and strategies that may be used in identifying pertinent legal resources. STEP 2: NARROWING YOUR SEARCH, suggests common areas of research in education law and controlling authorities therein. It also suggests additional resources that may be of particular use in finding specific points of law and on-line databases that are available for similar use. STEP 3: FINE TUNING YOUR SEARCH, suggests non-traditional resource tools and final steps to take in concluding the search. Appendices include copies of tables and directories suggested for use in the main text.

INTRODUCTION

Since public education's start in the 1800s, and the great proliferation of private schools in 1884[2] the law and education have been inextricably linked. The law has proved the natural by-way for educators, parents, and state and federal agencies and legislatures to address questions and make decisions regarding the common concern of educating a citizenry.[3] The interaction of these agents in three distinct but entirely overlapping jurisdictions, that is at the federal, state, and local levels, has given rise to a vast body of law that may be classified as "education law."[4] A quick glance in the 1994 *U.S.C.S. Lawyers*

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[2] Unwilling to join the public school movement and unable to garner public support for their own educational initiatives, the Catholic church began vigorous expansion of its parochial schools in 1884. 2 JOHN M. BLUM ET AL., THE NATIONAL EXPERIENCE PART - TWO A HISTORY OF THE UNITED STATES SINCE 1865 446 (1989).

[3] WILLIAM D. VALENTE, LAW IN THE SCHOOLS 2 (3rd ed. 1994).

[4] *Id.*

Edition serves to illustrate just how extensive the field has become. Under the heading of "Education" there are sixty-eight *pages* of subheadings, encompassing everything from "school lunches"[5] to "marital discrimination."[6] Furthermore, new case decisions, statutes, and regulations are promulgated daily, constantly adding to, detracting from, and changing the body of education law.[7]

The great variety of subject matter and substantive law grouped under the heading education law suggests what is most daunting about education law and perhaps what is most critical to successful research in this field. Education law is in reality a term that is broadly applied to a spectrum of legal authorities that have their genesis in other more traditional areas of the law, e.g., tort, constitutional, labor, and civil rights law. *Brown v. Board of Education*, for instance, is easily categorized as an education law decision but it is most frequently recognized as a civil rights decision. Other examples abound -- teacher employment regulation is certainly classifiable under the rubric of education law but intrinsically involves labor and contract law. Likewise a principal's search of a student's locker raises questions of the principal's authority as an educator to act in the place of both

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[5] 42 U.S.C.S. § 1751 (Law Co-op. 1978).

[6] 20 U.S.C.S. § 1071 (Law Co-op. 1978).

[7] Drug-use and fire-arms in schools have created a host of new legal quandaries and suggest the complexity of legal issues regarding school official's power to respond to these crises and parents rights in the face of their failure to do so, i.e. low to middle income families trying to afford both school taxes and private school tuitions in order to send their children to "safe" schools.

Likewise, sex education is often a part of institutional curricula. A parent's right to opt their child out of such a program has been cause for debate in state legislatures and opened a Pandora's Box concerning the right of the parent to influence public education curricula.

parent and civil authority, but it is first and foremost a Fourth Amendment matter.[8]

Consequently, it is impossible to talk about a single controlling federal statute or even a paradigm of state statutory or common law control. Professor William D. Valente of the Villanova University School of Law notes this in his latest treatise on education law, observing that

> The era when education law was largely confined to state school codes is long past. Today schools are governed by layers of federal, state, and local law that cannot be compressed into a single code. Constitutional law differs, in source and impact, from statutes enacted by Congress and by state legislatures. Administrative regulations emanate in turn from different departmental boards and bureaus of the federal, state, and local governments. These sources form a wide web of legal direction and control.[9]

With this in mind you may think it best to change your field of practice rather than jump into this quagmire of confusion. But fear not, there are some excellent resources available to the committed. Hopefully this guide will prove to be one of them.

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[8] The 1994 CORPUS JURIS SECUNDUM GENERAL INDEX, well illustrates this point. Under the heading "Schools and School Districts," the index includes numerous cross listings to other areas of the law including: Abortion - schools notification to parents, Abort § 68; Labor Relations, Lab Rel § 38; Towns, Bond Issues, Towns § 140; Busses, Disorderly Conduct - Refusal of child to obey orders not to eat fruit while riding, Disord C § 1(3); Civil Rights - see this index; Double Taxation, Overlapping Districts, Tax § 43; Evolutionary theory, teaching violation of constitutional provisions, Const L see 520; Closing, preventing spread of contagious diseases, Health § E; Flags, Pledge of allegiance and salute, Flags § 2, Noncurriculum forum student groups, religious groups also provided, Const L see 521, etc. GENERAL INDEX N-Z C.J.S. *Schools & School Districts* (1994).

[9] VALENTE, LAW IN THE SCHOOLS, *supra* note 3, at 2.

These sentiments are echoed by author James A. Rapp in his treatise EDUCATION LAW, stating "American education was and today remains an eclectic product of the diversity of the people and the evolving role that education must play. . . . It is a system whose role, parameters, and law were undefined at the outset and evolved over three centuries." JAMES A. RAPP, EDUCATION LAW 1-3 (1993).

STEP 1: BEGINNING YOUR RESEARCH

Given the dual nature of education law, initial phases of research may take on more significance than searches in other areas. A great deal of time that would otherwise be wasted pursuing misleading index heading may be saved by beginning the search with an eye for the more traditional legal topic. For example, if you are interested in student privacy rights on school property you may want to start with "search and seizures" as opposed to pursuing educator's authority to search. This is not to say however, that once you have identified the more traditional topic that you should find a research guide for that area and abandon this guide. On the contrary, having identified the relevant area of the law, it is equally important to conduct your education research therein, without having to master the new field in its entirety.

Fortunately, this author is not the first to discover that education law is not conveniently shelved in one bookcase or cataloged under one master heading. There are a number of general reference works worthy of initial consideration. Among the most comprehensive is Professor Valente's two volume treatise, *Education Law -- Public And Private*, offering an admirable summary of the current status of education law in a variety of areas.[10] Topics addressed include an overview of primary and secondary education, school property, transportation, educational financing, general education programs, student rights and discipline, and school tort liability.[11] Also worthy of note is Valente's reliance on primary

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[10] WILLIAM D. VALENTE, EDUCATION LAW - PUBLIC AND PRIVATE (1985).

[11] *Id.*

A 1985 review of the book offered the following: "Professor Valente's treatise is incisive, instructive, reliable and readable in guiding educators through the maze of legal rights, duties, uncertainties, anomalies and frontier issues. His footnotes and annotations enhance the

legal authorities. Valente catalogues a staggering number of primary cases and offers careful analysis of contemporary decisions augmented by case annotations that illustrate jurisdictional variations.[12] Appendices contain code and statute sections, interpreted and applied in the numerous cases detailed.

Also worth note is Valente's single volume treatise, *Law in the Schools*, now in its third edition.[13] *Law in the Schools* is a shorter work that does not provide the comprehensive historical review offered by *Education Law -- Public and Private*. However, *Education Law* was published in 1985 and has not been revised since 1989,[14] while *Law in the Schools*, published in 1994, offers up-to-date analysis of recent trends and developments in education law.[15] In addition, at the end of each *Law in the Schools* chapter is a quick reference section that lists pertinent cases and statutes. Concise summaries of each statute mentioned are provided along with excerpts of the relevant language and more a more detailed synopsis of the most relevant section(s) of each statute. These chapter-end reference sections are of especial value to new researchers as they provide the reader a comprehensive list of

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helpfulness of his textual descriptions and analyses. . . . Appendix tables for reference purposes . . . seek to chart state standards for public education, mandatory collective bargaining laws, privacy rights of parents and students, federal civil rights statutes, state educational expenditures, and public and private school enrollments among other pertinent data. Victor G. Rosenblum, *Education Law -- Public And Private, By William D. Valente*, 62 CHI.-KENT. L. REV. 345, 345 (1985)(book review).

[12] VALENTE, EDUCATION LAW, *supra* note 10.

[13] VALENTE, LAW IN THE SCHOOLS, *supra* note 3.

[14] A 1989 pocket part was issued for the set.

[15] The appendices include a table of cases conveniently formatted to highlight Supreme Court decisions, topical case lines, and the most recent cases. In addition, Valente very thoughtfully provides a glossary for those new to the area (or a little rusty on their latin). Unfortunately, the index is not very extensive in either of Valente's works, although EDUCATION LAW -- PUBLIC AND PRIVATE does offer a very thorough and well organized table of contents.

authorities relevant to particular sub-categories of education law.[16] Finally, each reference section is followed by detailed endnotes suggesting additional, more specialized sources useful in narrowing research to a particular point of interest.

In addition to the Valente treatises, Professor James A. Rapp's treatise, *Education Law*, offers a similarly comprehensive review of the field and developments therein.[17] Compared with Valente's work, however, Rapp's treatise is not as well indexed or organized and does not offer the cross-referencing and analysis that characterizes Valente's writing. For beginners in the field, Valente's works would be a better starting point. Nonetheless, while Rapp's work is not updated with the frequency that would warrant listing it as a loose leaf service, i.e. weekly, it is published in loose leaf form and is updated roughly every 5 months or so, much more frequently than the other treatises. Consequently, it is a valuable second-stop resource, useful for locating new information and for double-checking the continuing validity of older authorities.

If these treatises are not readily available to you, a quick visit to the reference section of your library may be the best way to get started. Specifically, legal encyclopedias serve the same function of allowing you to find relevant law in the vast field of authorities applicable in the education context. *American Jurisprudence, Second Edition* and *Corpus Juris Secundum* both have extensive index listing (located in the separate index volumes)[18] that

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[16] For a full discussion of sub-categories in education law see STEP 2 - NARROWING YOUR SEARCH, page 11.

[17] JAMES A. RAPP, EDUCATION LAW (1993).

[18] Education law listings are located under the heading of "Schools and School Districts" in CORPUS JURIS SECUNDUM. GENERAL INDEX N-Z C.J.S. *Schools & School Districts* (1994). *See* Appendix A for an example of the indexing structure offered in the CORPUS JURIS SECUNDUM index volumes.

allow the reader to quickly reference both statutes and case law.[19] In addition to the index, there is a detailed topical outline located in the front of each volume, providing a structured overview of topic covered. Most encyclopedias will offer general language and summations that often will not be as specific or focused as the treatises. Nonetheless, like the treatises, the footnotes contain cites to cases,[20] statutes, commentary and law review articles valuable in the latter stages of research.

A last general reference worthy of consideration is the *American Law Reports* (A.L.R.) which contain cases and annotations. A.L.R. annotations are articles that cover "a topic that is considerably narrower than a topic heading in an encyclopedia and about the same breadth as the subject of many legal periodical articles."[21] A.L.R.s can be of particular use to education researchers because they frequently highlight contrary holdings in given jurisdictions. Because much of education law stems from state statutes and state case law, there is often inconsistency within and across jurisdictions. A.L.R.s, by delineating conflicting holdings, help the researcher to best assess their options in pursing a particular line of reasoning. By making use of the cumulative index volumes (*Index to Annotations)*,[22] or the *A.L.R. Digests*[23] a researcher can find pertinent A.L.R. annotations.

While proceeding through the treatises, encyclopedias, A.L.R.'s and other general

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[19] Don't forget to check the update index volumes, these appear in both paper back and pocket part form - these often contain additional cites to relevant cases and the latest developments in a given area of interest.

[20] Cases are typically listed alphabetically by jurisdiction.

[21] CHRISTINA L. KUNZ ET AL., THE PROCESS OF LEGAL RESEARCH 91 (3rd ed. 1992).

[22] Note that this index does not cover the first series of the A.L.R., i.e. it covers 2d-5th and the federal series.

[23] The A.L.R. Digests offer summaries of cases and articles and is grouped by topic and therefore is useful in finding relevant articles or cases.

reference materials, keep a list of cases, subjects, and key terms or phrases that can be used in the second stage of research. Essentially, you should be looking for terms and phrases that are frequently used and that represent topic-specific-vocabulary.

On-Line Strategies -

Assuming you have some access to on-line search tools, e.g. WESTLAW, LEXIS\NEXIS, and Internet services, you may be able to greatly reduce your research time without even moving out of your favorite chair. WESTLAW in particular, has a specific Education Database that provides access to an impressive variety of sources and information.[24]

Of particular interest at the beginning stage of research are databases offering access to comprehensive reference sources, law reviews, texts, etc. LEXIS has a general law review database while WESTLAW has two education specific databases - the "ED-TP" database is dedicated to law review articles, texts, and journals that pertain to education law while "WELR" provides access to articles, notes and other non-judicial opinions published in West's specialized digest, *West Education Law Reporter.*[25]

If you have already gathered significant background information and have a command of pertinent legal jargon in your search area, a boolean search in a given federal or state case law database can turn up on-point cases allowing you to get right to work. This may be

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[24] *See* Appendix B for examples of what is available via WEST's Education Database. The truth of the matter is that a separate research guide could be written for WEST's education services - this author will limit discussion regarding electronic services to those specific resources that may assist in familiarizing a researcher with education law generally and in a search for a specific point of law.

[25] WELR does not contain cases reported in the published volumes. For more information on using the volumes see STEP 2, paragraph 2, page 11.

especially true if you have already identified pertinent WESTLAW key numbers (see the discussion in STEP 2, second paragraph for help on locating West Digest Key numbers and using the Descriptive-Word Index method). However if you are less familiar with your given area of research, a more general search in the West ED-TP or a LEXIS database, pe-haps using a natural language search on WESTLAW or free-style search on LEXIS, can turn up helpful articles and notes in a short time with minimal cost. With specific regard to WESTLAW, you can save your client (or yourself) a fair sum by making use of the ED-TP or WELR. Both of these databases allow the researcher to access education specific submissions from across the country without having to perform a search in an "All" designated database which can cost several times the normal user rate.

Several tactics should be kept in mind when conducting your on-line searches, whether boolean or natural language/free style. Do not limit your search terms -- take the list of terms generated from the treatises, encyclopedias, etc., and think of possible synonyms and associated terms. Make use of universal characters and use connectors to create searches that will look for a number of possible term connections in place of performing multiple simple searches (more costly).[26] As new sources are located and reviewed, again, keep a list of cases, subjects, and key terms or phrases, paying particular attention to language common to all your sources. In turn use these new terms in your searches -- proceed in this fashion until you have a constantly recurring group of terminology, indicating you have identified the essential concepts.

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[26] For example, using "Educat!" would garner educate, educator, education, educational, etc.

STEP 2: NARROWING THE SEARCH

Many research guides would now engage in a cursory discussion of controlling statutes and pertinent case law, assisting the researcher in finding and reviewing primary controlling authority. Alas, as already noted, the nature of education law makes it impractical to speak of any one group of statutes or cases that control the entirety of the field of education law. Nevertheless there are commonly recognized sub-categories in the field that involve frequent litigation on certain points of law. Following is a brief outline of some of the most regularly researched of these topic areas. Unlike the field as a whole some of these areas are governed by particular statutes and\or key cases, where available these sources are identified and can be consulted to locate on-point authorities. Naturally, it is neither feasible to list all possible sub-categories, nor to discuss comprehensively those that are listed. Nonetheless, the categories provided should enable the researcher with general background information to move into a more defined category and therein identify specific cases and statutes. For those researchers that have already identified cases and statues, these categories may assist in finding related cases and statutes that may not have been discovered in previous research.

Having completed a search of general reference sources and after reviewing the information presented in the sub-categories, you should have collected information on commonly used terminology, developed a more refined notion of your topic as it is classified in the education law context, and perhaps gathered some relevant case citations. At this point you are ready to move into a search for on-point case law in your relevant jurisdiction. Digests are a common and no doubt familiar tool for such research, and many researchers will be particularly familiar with the West digests and their corresponding reporters. Those

experienced with West's digests may also be aware that in the West digests, laws pertaining to education are typically found under "Schools," topic number 345. Less familiar perhaps, or unknown to those new to education law, is *West's Education Law Digest* and the corresponding *Education Law Reporter*.

West's Education Law Digest is a special subject digest which, like West's other digests, offer abstracts of decisions organized by subject and topical outline of case law. Of course, the special value of this digest is that it summarizes education law related cases reported by all federal courts and all state appellate courts.[27] Consequently, a researcher can review not only the limited number of education cases he might find in the appropriate reporter under the "Schools" topic, but all such cases from all jurisdictions. This may seem of questionable value given the need for controlling authority. However, the patch-work nature of education law frequently means an issue may be one of first impression for a given state court. In such instances, the approach of other states and/or federal courts becomes considerably more valuable and persuasive.

Accessing the *Education Law Digest* is accomplished in the same manner you access West's non-specialized digests. Like the other sets, there is a table of cases listed alphabetically and by reverse title allowing a researcher to locate previously identified cases in the digest. There you can find relevant key numbers with which additional on-point cases can be located. Likewise, a descriptive word index is contained in the general index volumes for the series, allowing the researcher to search using key legal terms and the like (from the

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[27] The EDUCATION LAW DIGEST contains education cases that pertain to primary and secondary education - a separate West digest, the HIGHER EDUCATION LAW DIGEST, reports cases concerning colleges and universities.

list of those collected from general references, sub-categories, etc.) if no cases have been previously located. Of course, researchers that have already acquired key numbers can simply turn to the appropriate topic and key number.

Having found cases previously or having located pertinent case summaries in the digest, the full report of the cases abstracted in the digest are available in *West's Education Law Reporter*, which is also organized with the Key number system. Consequently, if you start with the reporter, for example reviewing cases identified in a treatise or in the sub-categories below, you can obtain key numbers pertaining to specific points of law, via the West headnotes printed at the top of each opinion. In addition to reporting decisions of the United States Supreme Court, United States Courts of Appeals, United States District Courts, and State Appellate Courts, it provides case comments and a selection of education law articles.

On-Line Strategies -

On-line resources also offer access to the West Key Number system and can be used to expedite the second stage process of finding on-point case authority based on the terminology lists and/or case citations collected. Like using the published volumes, if you have located cases but do not have key numbers, you can find key numbers by reviewing the case and its headnotes on-line.[28] Once a specific key number is obtained, considerable time can be saved compared to a manual search, by performing an on-line search in selected

[28] Pulling up a specific case on WESTLAW is relatively inexpensive and may save considerable time and thereby money if the appropriate WEST digest is not available for manual location of the case and related key number.

databases using the key number. Depending on your jurisdictional parameters several education specific databases are available. Rather than using the ALLCASES, ALLFED or ALLSTATE databases (remember, these cost several times the normal user rate) you can gain access to the same range of education related cases by searching in the FED-CS (federal education cases) and MED-CS (multistate education cases) databases. A full listing of the education specific databases is available in the Education Directory on WESTLAW.[29]

EDUCATION LAW SUB-CATEGORIES

The topics selected, as noted, represent generally recognized sub-categories in education law. In considering the sources and governing authorities identified, it is helpful to have a cursory understanding of the federal and state powers that influence and frame these issues.

Federal/State Education Law History -

During the public education movement, initiated in the 1830s, advocates of public education argued that public schools would be the "'new enabling institutions' that would produce the quality of citizens needed to guarantee national survival through industrialization and urban growth."[30] By the early 1900s over half the states had established some agency or office within the state government for the promotion of education efforts. Initial involvement was limited to collecting information, conducting comparative studies, and suggesting uniform

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[29] *See* Appendix B for a printout of the Education directory.

[30] GROLIER ELECTRONIC PUBLISHING, INC., NEW GROLIER MULTIMEDIA ENCYCLOPEDIA, *Education Section Version* 6.03 (Release 6 1993) (CD-ROM).

guidelines for improvement.[31] Today, education expenditures account for the largest part of state budgets and state officials and agencies execute a wide variety of programs and duties pertaining to the control and operation of public education systems. State agencies or legislatures create and enforce policy guidelines including those pertaining to the accreditation processes, education standards, finance procedures, and hiring and licensing policies.[32] While private education is not subject to such direct control, states nonetheless exercise a great deal of influence via curriculum review powers, control of accreditation procedures, and professional licensing authority.[33] State law and control is generally carried out via the exercise of delegated authority by local school boards -- adding considerable regional variance to the body of controlling state law.[34]

By comparison, federal involvement was negligible for the better half of the 20th century.[35] Initial federal involvement began with congressional aid for vocational and veteran education.[36] Direct federal involvement in state secondary education efforts began in 1958 with the passage of the National Defense Education Act (NDEA) authorizing federal funding for science, mathematics, and foreign language education as well as federal guarantee of loans to students pursuing higher education.[37] The Elementary and Secondary Education Act of

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[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] For example, local school boards are often given discretion in choosing among a variety of financing mechanisms or schemes and have similar decision making power with regard to tort insurance options and policies.

[35] The U.S. Constitution doesn't mention education directly and it was not until the late 1800s that either house of congress would consider education which was regarded as falling squarely and entirely within state purview. GROLIER, *supra* note 30.

[36] *Id.*

[37] *Id.*

1965 (ESEA) made clear and undisputable the federal presence in state education.[38] Approving federal funding of state initiatives to assist poor and disadvantaged groups, ESEA established the federal role in creating "equal educational opportunity" in state education. Federal funding poured into state education systems, breaking the twenty-five billion dollar mark by 1978.[39]

In 1981, the Education Consolidation and Improvement Act attempted to curtail and reverse the trend of federal involvement by restructuring the form of funding distribution.[40] Block grants replaced specific program funding as a means of re-establishing state authority and discretion while decreasing federal control. For research purposes, this "federal retreat" is best viewed as purely political -- federal regulation and federal judicial involvement continue unabated in state education and are sources of primary authority in several areas.[41]

Within this nebulous context of federal and state give-and-take, the following categories exist -- each involving some central matter that is frequently litigated within the education context. The summary presented is gathered in large part from the Valente treatises. For a more detailed presentation on all of these subjects refer directly to the Valente treatises.[42]

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[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] VALENTE, EDUCATION LAW, *supra* note 10. VALENTE, LAW IN THE SCHOOLS, *supra* note 3.

A. Religion & The Schools

> If nowhere else, in the relation between Church and State, 'good fences make good neighbors.'
>
> Justice Felix Frankfurter
> *McCollum v. Board of Education*, 333 U.S. 203, 232 (1948).

Among the oldest and most contentiously litigated education questions is the on going debate about what role religion can or should play in the education environment. From whether a student must salute the flag[43] to the legality of delivering a prayer at a graduation ceremony,[44] school officials frequently face questions that involve exercise of fundamental rights. Almost exclusively, these cases involve interpretation of the Establishment and Free Exercise Clauses of the First Amendment.[45] Unfortunately, the founding fathers did not have the foresight to attach an exhaustive commentary explaining exactly what meaning to give the clauses in any and every possible scenario. Consequently, case authority is basically the only guide available in this area. There are literally hundreds of relevant cases illustrating an exceptional degree of diversity within the body of Supreme Court decisions as to what tests and standards should be employed in a given situation. The following cases may be referred to as initial starting points and/or as cases to consider in addition to those garnered from general reference sources and on-line searches.

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[43] W. Va. Bd. of Educ. v. Barnette, 319 U.S. 624, 641 (1943)(holding that students, objecting to the "one nation under God" language, could not be compelled to salute the flag).

[44] Lee v. Weisman, 112 S. Ct. 2649 (1992)(holding that the delivery of a nonsectarian prayer by a Rabbi invited by the school for an official baccalaureate service, violated the Establishment Clause).

[45] U.S. CONST. amend. I.

In relevant part Amendment I reads "Congress shall make no law respecting an establishment of religion, or prohibiting free exercise thereof . . . ." *Id.*

The 1985 Supreme Court decision in Wallace v. Jaffree offers insight into current views on the role and limits of the Establishment Clause. 472 U.S. 38 (1985).

School Prayer and Moments of Silence: *Wallace v. Jaffree*, 472 U.S. 38 (1985) (moment of silence),Engle v. Vitale, 370 U.S. 421 (1962) (school prayer); *Roberts v. Madigan*, 702 F. Supp. 1505 (D. Colo. 1989) (teachers silent reading of bible in school).

Prayer and Invocations at Official Public School Functions: *Lee v. Weisman*, 112 S.Ct. 2649 (1992).

Display of Religious Related Materials, Proclamations, etc.: *Allegheny County v. Greater Pittsburgh American Civil Liberties Union*, 492 U.S. 473 (1989); *Stone v. Graham*, 449 U.S. 39 (1980); *Joki v. Bd. of Educ.*, 745 F. Supp. 823 (N.D.N.Y. 1990).

Religion and Public School Curriculums: *Epperson v. Arkansas*, 393 U.S. 97 (1968) (evolution teachings); *Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058 (6th Cir. 1987) (textbooks); *Cornwell v. State Bd. of Educ.*, 314 F. Supp. 340 (D. Md. 1969), *aff'd*, 428 F.2d 471 (4th Cir. 1970) (sex education); *Hobolth v. Greenway*, 218 N.W.2d 98 (Mich. 1974) (sex education).

Federal and State Assistance to Parochial Schools: *Wheeler v. Barrera*, 417 U.S. 402 (1974); *Snyder v. Charlotte Pub. Sch. Dist.*, 333 N.W.2d 542 (Mich. 1983); *Citizens to Advance Pub. Educ. v. Porter*, 237 N.W.2d 232 (Mich. 1976).

Religious Group's Use of Public School Facilities: *Travis v. Owego-Appalachian Sch. Dist.*, 927 F.2d 688 (2d Cir. 1992), *Gregoire v. Centennial Sch. Dist.*, 907 F.2d 1366 (3d Cir. 1990); *May v. Evansville-Vanderburgh Sch. Corp.*, 787 F.2d 1105 (7th Cir. 1986). See also the Equal Access Act, 20 U.S.C § 4071 (1988).

B. Equal Opportunity in the Education Context:

> In respect of civil rights, all citizens are equal before the law.
> The humblest is the peer of the most powerful.
> Justice John Marshall Harlan
> *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

No doubt most researches will have some cursory recollection of *Brown v. Board of Education*,[46] widely regarded as the genesis of equal opportunity focus in state systems of education and the education field generally. Since this landmark decision in 1954, the

[46] Brown v. Bd. of Educ. I, 347 U.S. 483 (1954); Brown v. Bd. of Educ. (Brown II).

quantity of state and federal regulation in this area has exploded. Admission policies, employment procedures and policies, assistance programs, and population demographics are all subject to extensive state and federal regulation and a growing body of case authority. The great majority of this law is not education specific and exists as one of the fastest growing and constantly evolving bodies of law. Unlike religious issues in education, however, equal opportunity in education is controlled by several key federal statutes, many of which have corresponding state statutes. The following should be considered:

- Civil Rights Act of 1964, 42 U.S.C. § 2000
  - Title VI (prohibits discrimination on the basis of "race, color, or national origin under any program or activity receiving Federal financial assistance." - § 2000 (d))
  - Title VII (prohibits discrimination in employment - § 2000(e))
- Education Amendments of 1972
  - Title IX, 20 U.S.C. § 1681 (prohibits sex discrimination in education programs)
  - Title IX, Regulations, 34 C.F.R. § 106-1 et seq. (prohibiting discrimination in admissions, education activities, athletics and course offerings. Also prohibits discrimination on the basis of marital or parental status)
- Equal Pay Act of 1963, 29 U.S.C. 206(d) (prohibiting sex discrimination in compensation)
- Equal Educational Opportunities Act of 1974, 20 U.S.C., 20 U.S.C. § 1703 (provides that "No state shall deny equal educational opportunity . . . on account of his or her race, color, sex, or national origin . . . ."
- Rehabilitation Act of 1973, 29 U.S.C. § 794 (prohibits discrimination against persons with disabilities by "any program or activity receiving financial assistance."
- Americans with Disabilities Act of 1990, 42 U.S.C. § 12101(prohibits discrimination of the basis of qualified disabilities)
- Civil Rights Restoration Act of 1991 (various titles) (adopting a variety of congressional interpretations of early civil rights statutes, including overturning a number of Supreme Court interpretations of previous civil rights acts).

There is an extensive body of case law that interprets and expands upon these statutes. Review of the statute of interest in the *United States Code Annotated* (U.S.C.A.) or *United States Code Service* (U.S.C.S.) will be useful in locating pertinent case law. Both offer annotations containing references to other relevant statues, as well as regulations and case

authority. Many of the statutes indicated are executed and interpreted by the Equal Employment Opportunity Commission[47] (E.E.O.C.). Consequently, the U.S.C.S., which makes greater reference to agency decisions and regulations,[48] may be most helpful. When using either work it is important to refer to pocket parts, as these will contain contemporary agency and court decisions which are essential in an area that is in such flux.

C. Labor and Employment Issues In the Education Context:

> This standing, alone, is not enough to support a claim of a deprivation of property . . . She must allege the existence of rules or understandings promulgated or fostered by state officials which would justify a legitimate claim of entitlement to job tenure; mere statements of continuous employment will not suffice.
>
> *Hawkins v. Linn County School District No. 14*, 517 P.2d 330 (Or. 1973).

Teachers, at all levels of education, are subject extensive professional regulation. In primary and secondary public education, state certification is a universal requirement.[49] These state-imposed regulations are further complicated by the presence of collective bargain agreements and internal union regulation, and the entire body of labor law applicable in any employment context.[50] Among the most organized professional groups in the nation, teachers and their representative organizations, like the National Education Association (N.E.A.), are highly effective in influencing education law at every level.

In considering licensing and employment procedures, i.e. certification, a researcher will

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[47] Created by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(a).
[48] Kunz, *supra* note 21, at 334.
[49] VALENTE, EDUCATION LAW, *supra* note 10, at 136.
[50] *Id.* at 191.

find it most useful to begin with a review of the state code concerning licensing and organization of teaching professionals. Do not forget that many firms and libraries provide CD-ROM access to their state's code. Provided you are familiar with the interface system (West's CD-ROM services use an interface system virtually identical to the on-line system), you can save hours of time you would otherwise have to spend flipping through a code index. The relevant state code sections will also generally provide for discharge and disciplinary authority as well.[51] Likewise, virtually every state code contains provisions pertaining to tenure status and the rights, obligations, and procedures associated therewith.[52]

On the other hand, education labor and collective bargaining organizations fall under the purview of general labor law provisions. Most states have adopted labor statutes that closely follow the National Labor Relations Act,[53] which fairly exclusively controls the organization and bargaining process. Consequently, a researcher in this sub-category may find it necessary to make frequent reference to decisions and interpretive rulings of the National Labor Relations Board.[54] An entire separate guide is no doubt essential for effective researching in the labor context. For those who cannot locate a guide or stall until one is written, the treatises, *Basic Text on Labor Law, Unionization, and Collective Bargaining*[55] and *The Board, the Courts, and the NLRA*, offer comprehensive review of the field. However,

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[51] *Id.* at 155.

[52] *Id.* at 148.

[53] Initially adopted as the Wagner Act of 1935 and repeatedly amended, 29 U.S.C.A. § 151 et. seq.

[54] The National Labor Relations Board is an independent federal agency created by the National Labor Relations Act (Wagner Act) as amended, 29 U.S.C.A. § 153.

[55] R. GORMAN, BASIC TEXT ON LABOR LAW, UNIONIZATION, AND COLLECTIVE BARGAINING (1976).

given the volume and frequency of NLRB activity, Case law research in the labor context often involves use of services, instead of digests. The Bureau of National Affairs (BNA) and Commerce Clearing House (CCH) each produce multi-volume services that are updated weekly and, for the most patient and resourceful of souls, may yield helpful information.

Note however, that it is not absolutely necessary that a researcher turn to these labor specific resources. The aforementioned *Education Law Digest* and *Education Law Reporter* may be quite sufficient for locating education specific case law that governs teachers' employment and labor rights. Again, use of the Key number system can quickly locate very specific points of law with considerable precision.[56] Also recall that the same pin-point location can be achieved in an on-line search.

D. Student Rights

> In determining whether the search at issue in this case violated the Fourth Amendment, we are faced initially with the question whether that Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. We hold that is does . . . .
>
> Justice White
> *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

If ever there were days of the dutiful student and the omnipotent teacher, they have, for better or worse, disappeared into the annals of education history. Today, the dilemma of where to draw the line between student right and institutional prerogative faces teachers at all levels -- a wrong call can mean a costly trip to court and a slew of undesired legal problems. This area, of all the education sub-categories, is perhaps the broadest -- ranging from the

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[56] *See* Appendix D for an example of the type of information available in the EDUCATION LAW DIGEST pertaining to labor law in the education context.

search and seizure powers of a principal to the right of students to opt out of certain courses made mandatory by the school curriculum. Recent years have seen this realm of education litigation further expand. Facing a crisis of violence and drug use in their halls, educators more and more frequently find themselves pursuing previously unimagined disciplinary and safety procedures.

The great majority of rights asserted by students and parents are based on constitutional claims of student civil rights. While actual educator authority is delineated by state (see state codes) and local regulations, the law in this area is primarily case law and most often involves interpretation of procedural due process or substantive due process rights.[57] The following sub-headings suggest some commonly asserted rights and associated case law. Should this list prove unhelpful, the previously mentioned treatises and reporters may contain relevant leads when searched in the area of one or more of these sub-heading.

Procedural Due Process Claims:

Notice and Hearings: *Goss v. Lopez*, 419 U.S. 565 (1975) (constitutional due process rights of students in disciplinary hearings); *Furutani v. Ewigleben*, 297 F. Supp. 1163 (N.D. Cal. 1969) (self-incrimination and testimony in school hearings).

Vagueness Doctrine and School regulations: *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, (1986).

Impartial Tribunal: *Gonzales v. McEuen*, 435 E. Supp. 460 (1977); *Pierce v. Sch. Comm. of New Bedford*, 322 F. Supp. 957 (D. Mass. 1971).

Right of Confrontation: *Wasson v. Trowbridge*, 382 F.2d 807 (2d Cir. 1967); *Dillon v. Pulaski City Special Sch. Dist.*, 468 F. Supp 54 (E.D. Ark. 1978) (holding right to confront school officials making accusations).

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[57] VALENTE, LAW IN THE SCHOOLS, *supra* note 3, at 270.

Federal courts are not in accord in this area however, see also *Boykins v. Fairfield Bd. of Educ.*, 492 F.2d 697 (5th Cir. 1974) (refusing to require confrontation in expulsion proceedings).

Right to Counsel: *Madera v. Bd. of Educ.*, 380 F.2d 778 (2nd Cir. 1967), *Givens v. Poe*, 346 F. Supp. 202 (W.D.N.C. 1972), *Mills v. Bd. of Educ.*, 348 F.Supp. 866 (D.D.C. 1972), *Pa. Ass'n for Retarded Children v. Cmwlth.*, 343 F. Supp. 279 (E.D. Pa. 1972), *Texarkana Indep. Sch. Dist. v. Lewis*, 470 S.W.2d 727 (Tex. Civ. App. 1971), *Re Goldwyn*, 281 N.Y.S.2d 199 (1967).

Substantive Due Process Claims

Freedom of Expression: *Hazelwood Sch. Dist. v.Kuhlmeier*, 484 U.S. 260 (1988), *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, (1986), *Tinker v. Des Moines Ind. Comm. Sch. Dist.*, 393 U.S. 503 (1969).

Bodily Security: *Thelma D. By Delores A. V. Bd. of Educ.*, 934 F.2d 929 (8th Cir. 1991) (sexual harassment\molestation), *Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720 (3rd Cir. 1989) (sexual harassment\ molestation), *Ingraham v. Wright*, 430 U.S. 651 (1977) (corporal punishment).

Search & Seizure: *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (search of student's locker and purse), *Williams by Williams v. Ellington*, 936 F.2d 588 (2d Cir. 1991) (unusual case allowing strip search), *Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470 (5th Cir. 1982) (use of drug-sniffing dogs not allowed), *M.W. v. Anker*, 607 F.2d 588 (2d Cir. 1979) (strip search not allowed), *Brooks v. E. Chambers Consol. Sch. Dist.*, 730 F. Supp. 759 (S.D. Tex. 1989) (urinalysis and, blood testing), *Wynn v. Bd. of Educ. of Vestavia Hills*, 508 So.2d 1170 (Ala. 1987) (search of students pockets and clothes).

Informational Privacy - Student Records: Family Education Rights and Privacy Act of 1974, 20 U.S.C. § 1232(g) controls.

E. Tort Liability for Educational Institutions:

[A] school district is not the insurer of complete safety of school children, nor is it strictly liable for any injuries which may occur to them.

Benton v. School Board of Broward County, 386 So.2d 831, 834 (Fla. App. 1980).

In 1975, Chris Thompson, a fifteen year old high school football star was paralyzed for life when his spinal cord was snapped during a collision with opposing players.[58] Chris's attorney brought suit against the Seattle School district on September 19, 1978, claiming the school district was negligent in failing "to instruct and drill its football players against lowering their heads."[59] Five years later in November of 1983, weeks before the Supreme Court of Washington was to hear the case on appeal, a settlement agreement of 3.9 million dollars was made.[60]

This type of unforeseen accident is far from uncommon and is certainly not limited to sports activities.[61] Educational institutions face potential tort claims on a growing number of fronts: corporal punishment, premises accidents, and supervisory duty on school grounds, in classrooms and corridors, and in athletic activities, to name just a few.[62] Tort liability in all of these situations is created by controlling state law and consequently is the province of state courts. Therefore, you may find it most effective to begin with the state code[63] and having gained some insight into general tort liability holdings, turn your attention to specific cases. Many codes offer case references that can assist in finding relevant law. Below are a some general topics frequently at issue in school tort litigation and a list of related cases. Naturally given the jurisdictional constraints many of the cases will be of limited use. Nonetheless, they may be helpful in gaining insight on specific points and offer key words and language

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[58] JEFFREY O'CONNELL & C. BRIAN KELLY, THE BLAME GAME, 1 (1987).
[59] *Id.* at 9.
[60] *Id.* at 12.
[61] VALENTE, LAW IN THE SCHOOLS, *supra* note 3, at 439.
[62] *Id.* at 436-43.
[63] Don't forget that many firms and libraries provide CD-ROM access to state codes.

that may be of assistance in an on-line search. Electronic searching may be the most efficient research tactic in this area given the jurisdictional limitations.

Education defenses to tort claims

Immunity: *Barr v. Bernhard*, 562 S.W.2d 844 (Tex. 1978); *Morrison v. Comm's Anita Sch. Dist.*, 358 N.E.2d 389 (Ill. 1976); *Baird v. Hosmer*, 347 N.E.2d 533 (Ohio 1976) (cites statutes from other states).

Privileged Actions: *Furrh v. Ariz. Bd. of Regents*, 676 P.2d 1141 (Ariz. 1983); *Owens v. Commonwealth of Ky.*, 473 S.W.2d 827 (Ky. 1971); *Smalls v. Bd. of Educ.*, 450 N.Y.S.2d 987 (1982).

Fault of the Victim: *Berman by Berman v. Philadelphia Bd. of Educ.*, 456 A.2d 545 (Pa. 1983) (student knowingly engages in risky activity); *Becker v. Beaverton Sch. Dist.*, 551 P.2d 498 (Or. 1976) (school rule violated by student); *Vendrell v. Sch. Dist.*, 376 P.2d 406 (Or. 1962) (voluntary school athletic activity).

Signed Waivers: *Wagenblast v. Odessa Sch. Dist.*, 758 P.2d 968 (Wash. 1988); *Whittington v. Sowela Technical Inst.*, 438 So.2d 236 (La. 1983); *Fedor v. Mauwehu Council of Boy Scouts*, 143 A.2d 466 (Conn. 1958).

Tort Claim Areas

Corporal Punishment: *Ingraham v. Wright*, 430 U.S. 651 (1977); *Roberts v. Way*, 398 F. Supp. 856 (Vt. 1975); *Ind. St. Personnel Bd. v. Jackson*, 192 N.E.2d 740 (Ind.. 1963).

Premises Liability: for listings see Annots., *Public Sch. Premises Liability*, 37 A.L.R. 3d 712, 738 (1971); *Tort Liability of Public Schools . . . for Accidents due to Condition of Buildings and Equipment*, 34 A.L.R. 3d 1166 (1970).

School Grounds - Supervision Liability: Non-school hours: *Richard v. St. Landry Parish Sch. Bd.*, 344 So.2d 1116 (La. 1977); *Miller v. Yoshimoto*, 536 P.2d 1195 (Hawaii 1975),*Ulm v. Gitz* 286 So.2d 720 (La. 1973); *Tymkowicz v. Jose Un. Sch. Dist.*, 312 P.2d 388 (Cal. 1957).

During School hours: *Titus v. Lindberg*, 288 A.2d 65 (N.J. 1967); *Briscoe v. Sch. Dist.*, 201 P.2d 697 (Wash. 1949); *Taylor v. Oakland Scavenger Co.*, 110 P.2d 1044 (Cal. 1941);*Cianci v. Bd. of Educ.*, 238 N.Y.S.2d 547 (1963).

Classroom and Halls - Supervision Liability: *Collins v. Sch. Bd.*, 471 So. 2d 560 (Fla. Dist. Ct. App. 1985); *Swattkowski v. Bd. of Educ.*, 319 N.Y.S.2d 783 (1971); *Gonzales v. Mackler*, 241 N.Y.S.2d 254 (1963); *Barbato v. Bd. of Educ.*, 182 N.Y.S.2d 875 (1959); *Bertola v. Bd. of Educ.*, N.Y.S.2d 831 (1956).

Athletics and Physical Education - Supervision Liability: *Berman by Berman v. Philadelphia Bd. of Educ.*, 456 A.2d 545 (Pa. 1983), (some risk incidental); *Ragnone v. Portland Sch. Dist.*, 633 P.2d 1287 (Or. 1981) (special supervision required); *Gerrity v. Beatty*, 373 N.E.2d 1323 (Ill. 1977) (faulty safety equipment); *Armlin v. Bd. of Educ.*, 320 N.Y.S.2d 402 (1971) (instructor violation of school safety rules). For review of organized sports cases see Annots., *Schools--Liability--Athletic Events*, 35 A.L.R. 3d 627 (1971).

STEP FOUR: FINE TUNING YOUR RESEARCH

By this point in the game, you should have located the applicable statue(s), a variety case law, and a few on-point cases. Congratulations, you are almost home. Before fleeing the library however there are a few last stop things you might want to consider.

Shepardizing

The term "Shepardizing" has been known to strike fear (quite a bit of fear actually) in the hearts of mortal law students and practitioners. This is no doubt perfectly understandable if one has ever consulted or attempted to consult the Shepard's and its obtuse abbreviations. Fortunately the fine people at West provide (for a minor fee)[64] a comparatively painless way of checking to make sure your case is still good law. Use Insta-Cite to display direct case

[64] As of January 1, 1995, for the general user the price is $2.50 to perform an insta-cite and $2.50 to Shepardize (does not include Shepard's Preview or Quickcite) via WestCheck. A regular on-line hourly fee rate is applicable if you use any of these services via WESTLAW as opposed to WestCheck.

history that is current up to twenty-four to thirty-six hours within receipt of the latest decision (much more current than Shepard's). Any negative indirect case history is displayed for all cases decided since 1972. Shepard's Citations can be used to display a detailed listing of references to cases and statutes. Shepard's Previews can be used to view case cites that are not yet available on Shepard's.

In short, it is essential to use these services to insure that any case, especially those that are obtained from non-on-line sources that are only intermittently updated, are still good law. Use of these services can also help to identify other cases that may have been overlooked.

Alternate Resources

Memo Files: If you should find yourself beginning a research project while working for a firm, do not fail to inquire about memo files.[65] Many firms maintain copies of summer associate and practitioner memos. With a little luck the firm librarian, assigning partner, or her secretary, can direct you to a relevant memo addressing a similar or related issue. Firm work-product can be invaluable in suggesting not only relevant research sources but also the appropriate manner or angle with which to approach the subject.

Voyaging onto the Internet: Perhaps as baffling as a trip to the library, is a voyage onto the Internet. Nonetheless, despite the complexity, the Internet is a vast source of free

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[65] Credit for identifying and suggesting the use of firm memo files, is due to the author of RESEARCHING INSURANCE COVERAGE FOR ENVIRONMENTAL CLAIMS, prepared for Prof. Kent Olson's Advanced Legal Research Class in the Spring of 1994, University of Virginia, School of Law. A copy of this work is available on reserve at the Arthur J. Morris Law Library.

information which is growing at a mind boggling rate (WESTLAW and LEXIS beware!) Full text of Supreme Court decisions are now available on-line at no cost, and more and more courts are adding electronic posting systems. While these sources do not have the reference features (i.e. key numbers) available via services like WESTLAW, they offer an inexpensive source of information for the savvy Internet user.

More significant for the education law researcher is access to materials made available by government agencies. The Department of Education, like many other government entities, has an on-line service providing access to department press releases, new regulations, and a host of education related digests. Of special value is "ERIC," the Education Resource Information Center, a national information system containing "over 75,000 abstracts of documents and journal articles on education research and practice."[66] Appendix F contains a listing of the types of documents available in the ERIC database, among them are legal, legislative and regulatory materials including numerous articles pertaining directly to education law. *Dismissing Incompetent Teachers, Minimum Competency Testing, Student Discipline Policies, and Teacher Tenure* are among the thousands of legally related documents available via ERIC.[67] ERIC is also available through WEST - of course you'll pay the standard WESTLAW rate for a Dialog database search which is typically more expensive

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[66] OFFICE OF EDUCATIONAL RESEARCH & IMPROVEMENT, U.S. DEPARTMENT OF EDUCATION, POCKET GUIDE TO ERIC, *available through* Internet, Library of Congress service, Department of Education.

See Appendix E for a copy of the Pocket Guide to ERIC, an on-line resource that provides an overview of ERIC and information on how to gain access to ERIC.

[67] *See* Appendix F, page 2, for sample listing of other legal related articles available through ERIC.

than searching a case law database.[68]

Regardless of your access method, you will probably discover you need to find another guide just to get around on the Internet. To make use of ERIC and the other Education Department resources access World Wide Internet Services from your local gopher server, then select Library of Congress, Government Information, Federal Government, Information by Branch of Federal Government, Executive Branch, and finally Education Department, and then explore, explore, explore. Patience and tenacity will serve you well if you are serious about making the most of Internet resources.

CONCLUSION

In bidding you farewell, allow me to reiterate my hope that this guide will prove helpful in your research efforts. Allow me to also offer this final bit of borrowed wisdom for those who have found their endeavors fruitless or exasperating:

> Law is law--law is law; and as in such, and so forth, and hereby, and aforesaid, provided always, nevertheless, and notwithstanding. Law is like a country dance: people are led up and down it till they are tired. Law is like a book of surgery: there are a great many desperate cases in it. It is also like physic: they that take least of it are best off. Law is like a homely gentlewoman: very well to follow. Law is also like a scolding wife: very bad when it follows us. Law is like a new fashion: people are bewitched to get into it; it is also like bad weather: most people are glad when they get out of it.
>
> George Swenson
> Marshall Brown, *Wit and Humor of Bench and Bar* (1899)

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[68] *See* Appendix F, page 3.

APPENDICES

CORPUS JURIS SECUNDUM

SCHOOLS AND SCHOOL DISTRICTS

Analysis

I. IN GENERAL, §§ 1-2

II. PUBLIC SCHOOLS IN GENERAL, §§ 3-13
- A. IN GENERAL, §§ 3-7
- B. SCHOOL LANDS AND SCHOOL FUNDS, §§ 8-13

III. SCHOOL DISTRICTS AND OTHER LOCAL SCHOOL ORGANIZATIONS, §§ 14-73
- A. IN GENERAL, §§ 14-17
- B. CREATION AND ALTERATION, §§ 18-62
  1. *In General*, §§ 18-31
  2. *Proceedings for Creation or Alteration*, §§ 32-54
  3. *When Creation or Alteration Becomes Effective; Operation and Effect*, §§ 55-56
  4. *Supervision and Review of Action of Subordinate Agency*, §§ 57-62
- C. DISTRICTS OF PARTICULAR KINDS OR FOR PARTICULAR PURPOSES, §§ 63-68
- D. DISSOLUTION OR ABOLITION, §§ 69-71
- E. DEVOLUTION OF PREEXISTING RIGHTS AND LIABILITIES ON ALTERATION OR DISSOLUTION, §§ 72-73

IV. ADMINISTRATION, GOVERNMENT, AND OFFICERS IN GENERAL, §§ 74-109
- A. ADMINISTRATION AND REGULATION IN GENERAL, §§ 74-80
  1. *In General*, §§ 74-76
  2. *Penalties and Offenses*, §§ 77-80
- B. STATE SCHOOL BOARDS AND OFFICERS, §§ 81-92
- C. COUNTY SCHOOL BOARDS AND OFFICERS, §§ 93-106
- D. TOWN OR TOWNSHIP SCHOOL BOARDS AND OFFICERS, §§ 107-109

V. DISTRICT BOARDS, MEMBERS, AND OTHER DISTRICT AND LOCAL OFFICERS, §§ 110-171
- A. IN GENERAL, §§ 110-116
- B. ELECTION OR APPOINTMENT, §§ 117-132

See also General Index

V. DISTRICT BOARDS, MEMBERS, AND OTHER DISTRICT AND LOCAL OFFICERS—Cont'd

C. RESIGNATION; REMOVAL AND SUSPENSION, §§ 133–137

D. VACANCIES, §§ 138–139

E. COMPENSATION AND REIMBURSEMENT, §§ 140–141

F. POWERS, FUNCTIONS, AND DUTIES, §§ 142–157

1. *In General*, §§ 142–147

2. *Meetings*, §§ 148–152

3. *Minutes and Records*, §§ 153–155

4. *Orders and Decisions; Administrative Review*, §§ 156–157

G. JUDICIAL SUPERVISION AND REVIEW OF ACTS, §§ 158–162

H. PERSONAL LIABILITY OF OFFICERS AND MEMBERS OF DISTRICT BOARDS, §§ 163–167

I. LIABILITIES ON OFFICIAL BONDS, §§ 168–171

VI. AGENTS AND EMPLOYEES, §§ 172–190

A. IN GENERAL, §§ 172–176

B. COMPENSATION, RETIREMENT PAY, AND OTHER BENEFITS, §§ 177–182

C. REGULATION, DISCIPLINE, AND TERMINATION, §§ 183–190

1. *Regulation and Discipline*, §§ 183–186

2. *Termination of Employment*, §§ 187–190

VII. TEACHERS, PRINCIPALS, SUPERINTENDENTS, AND SIMILAR PERSONNEL, §§ 191–355

A. IN GENERAL, §§ 191–195

B. CERTIFICATE OR LICENSE, §§ 196–203

C. EMPLOYMENT OR APPOINTMENT, §§ 204–208

D. CONTRACTS OF EMPLOYMENT, §§ 209–220

E. TERM AND TENURE, §§ 221–239

1. *Term*, § 221

2. *Tenure*, §§ 222–239

a. Statutes Providing for Permanent or Indefinite Tenure, §§ 222–227

b. Operation and Effect in General, §§ 228–239

F. REGULATION, DISCIPLINE, PROMOTION, DEMOTION, ASSIGNMENT, AND TRANSFER, §§ 240–251

G. RETENTION, CHANGE, INTERRUPTION OF EMPLOYMENT STATUS, REEMPLOYMENT OR RENEWAL IN GENERAL, §§ 252–269

1. *In General*, §§ 252–263

2. *Reemployment and Renewal of Contract*, §§ 264–269

H. DISMISSAL, REMOVAL, OR TERMINATION IN GENERAL, §§ 270–298

1. *In General*, §§ 270–274

2. *Necessity for, and Sufficiency of, Cause or Grounds for Removal or Dismissal*, §§ 275–279

3. *Mode of Removal or Dismissal*, §§ 280–286

WESTLAW DIRECTORY WELCOME SCREEN P1
EDUCATION DATABASES P416

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Education databases contain documents that relate to all levels of public and private education. Among the subjects included are the rights and liabilities of administrators, elected officials, students and teachers.
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INDEX TO EDUCATION DATABASES

Federal Databases--
- Administrative Law ..... This Page
- Case Law ..... Next Page
- Statutes & Regulations . Next Page

Specialized Databases ... Next Page
- DIALOG Databases ..... Enter P418

INDEX CONTINUED

- State Case Law Databases ... Enter P418
- Texts & Periodicals ..... Enter P418

FEDERAL DATABASES
ADMINISTRATIVE LAW

FED-ADMIN Dept. of Education Decisions

If you wish to:
Select a database, type its **identifier**, e.g., **FED-ADMIN** and press **ENTER**
View information about a database, type **SCOPE** followed by its **identifier** and press **ENTER**

WESTLAW DIRECTORY WELCOME SCREEN P1
EDUCATION DATABASES P417

FEDERAL DATABASES

CASE LAW

FED-CS Federal Cases
FED-SCT Supreme Court
FED-CTA Courts of Appeals
FED-DCT District Courts

STATUTES & REGULATIONS

FED-USCA U.S. Code Sections
FED-FR Federal Register
FED-CFR Code of Regulations

SPECIALIZED DATABASES

APN-DR American Political Network - Daily Report Card
EDTECHN Education Technology News
EDMKTR Educational Marketer
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TABLE OF CONTENTS

	Page
Editorial Advisory Committee	V
Table of Cases Reported	VII
Case Comments	
Court Restores Principals as Instructional Supervisors by Clifford P. Hooker, Ph.D.	[1]
Student Initiated Prayer Meetings in Public Secondary Schools and Higher Education: An Apparent Double Standard by Martha McCarthy	[481]
Bob Jones University v. United States: Public Policy and Religious Educational Institutions by Ralph D. Mawdsley	[745]
Creation Science Has No Legitimate Educational Purpose: McLean v. The Arkansas Board of Education by Clifford P. Hooker, Ph.D.	[1069]
Articles	
State Accreditation of Non-Public Schools: Quality Regulations and the First Amendment by Julie Underwood O'Hara, J.D.	[5]
Public Aid to Private Schools: A Shift in Direction? by Thomas Griffen	[753]
Consistent Inconsistency: Supreme Court Decisions on Public Aid to Private Education by Christiane Citron	[1077]
Text of Opinions	[13]
Key Topic Analyses	[1411]
Key Number Digest	[1417]

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SCHOOLS

SUBJECTS INCLUDED

Institutions for instruction below the grade of colleges or universities, whether maintained by private means for individual benefit, or by government as common or public schools

Bodies formed for maintenance of such institutions, whether unincorporated or incorporated by special charters or under general laws, or formed by territorial subdivision of counties, towns, or cities, etc.

Constitutional and statutory provisions relating thereto

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Incorporation and organization of private schools, academies, etc., and public aid and regulation thereof

Creation, organization, boundaries, alteration and dissolution of school districts

School meetings and government and officers of school districts

School lands, funds, buildings, furniture, textbooks, and other property and supplies, and contracts relating thereto

Indebtedness, bonds, warrants, and other securities of school districts

Taxation by school districts

Qualifications, employment and discharge, and compensation of teachers and other specialized officers and employees

Admission and attendance of pupils

Curriculum, rules, discipline and government of schools

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Public lands reserved as school lands, but not allotted to school districts, see PUBLIC LANDS

Taxation for school purposes, see TAXATION

For detailed references to other topics, see Descriptive-Word Index

---

Analysis

I. PRIVATE SCHOOLS AND ACADEMIES, ⇐1-8.

II. PUBLIC SCHOOLS, ⇐9-178.

(A) ESTABLISHMENT, SCHOOL LANDS AND FUNDS, AND REGULATION IN GENERAL, ⇐9-20.

(B) CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION OF DISTRICTS, ⇐21-44.

(C) GOVERNMENT, OFFICERS, AND DISTRICT MEETINGS, ⇐45-63.

(D) DISTRICT PROPERTY, CONTRACTS, AND LIABILITIES, ⇐64-89.10.

(E) DISTRICT DEBT, SECURITIES, AND TAXATION, ⇐90-111.

(F) CLAIMS AGAINST DISTRICT, AND ACTIONS, ⇐112-126.

(G) TEACHERS, ⇐127-147.

(H) PUPILS, AND CONDUCT AND DISCIPLINE OF SCHOOLS, ⇐148-178.

I. PRIVATE SCHOOLS AND ACADEMIES.

⇐1. Establishment and status in general.
⇐2. Incorporation and organization.
⇐3. Public aid.
⇐4. Regulation and supervision.
⇐5. Property, funds, and liabilities in general.
⇐6. Governing boards and officers.
⇐7. Teachers and other instructors.
⇐8. Pupils, tuition, and discipline.

SCHOOLS

(A) ESTABLISHMENT, SCHOO AND FUNDS, AND REGUI IN GENERAL.

⇐9. Power to establish and maint
⇐10. Constitutional and statute
⇐11. School system, and establis maintenance of schools an tional institutions in gen
⇐12. Application of school systen incorporated towns and
⇐13. Separate schools for racial
⇐13(1). In general.
⇐13(2). Existence and propriety system.
⇐13(3). Equality within segregat
⇐13(4). Desegregation and du duty to desegregate in
⇐13(5). De facto or de jure segr
⇐13(6). Desegregation plans in
⇐13(7). Role of courts.
⇐13(8). Role of federal or state and local committees.
⇐13(9). Time for desegregation.
⇐13(10). Justification for delay
⇐13(11). Step-by-step desegreg tional period.
⇐13(12). School location; distric same areas.
⇐13(13). School pairing or clust
⇐13(14). Freedom of choice; tr
⇐13(15). Disregard of district b
⇐13(16). Private schools; stat and abandonment of public system.
⇐13(17). Particular schools; r and activities.
⇐13(18). Actions.
⇐13(19). —— Evidence.
⇐13(20). —— Judgment and jurisdiction.
⇐13(21). —— Review.
⇐14. State and county educatio
⇐15. Application to school pu lands and proceeds the
⇐16. School funds.
⇐17. —— Creation and source
⇐18. —— Investment and adm
⇐19. —— Apportionment and
⇐19(1). In general.
⇐19(2). Apportionment amend tendance.
⇐19(3). Enumeration of child apportionment.
⇐19(4). Schools in cities.
⇐19(5). Appropriation of fund school property.
⇐19(6). Illegal apportionment.
⇐20. Regulation and supervis educational institution

(B) CREATION, ALTERATIO AND DISSOLUTION OF

⇐21. Nature and status as m
⇐22. Constitutional and stat

SCHOOLS

II. PUBLIC SCHOOLS.

(A) ESTABLISHMENT, SCHOOL LANDS AND FUNDS, AND REGULATION IN GENERAL.

⇐9. Power to establish and maintain in general.
⇐10. Constitutional and statutory provisions.
⇐11. School system, and establishment or discontinuance of schools and local educational institutions in general.
⇐12. Application of school system to cities and incorporated towns and villages.
⇐13. Separate schools for racial groups.
⇐13(1). In general.
⇐13(2). Existence and propriety of segregated system.
⇐13(3). Equality within segregated system.
⇐13(4). Desegregation and integration and duty to desegregate in general.
⇐13(5). De facto or de jure segregation.
⇐13(6). Desegregation plans in general.
⇐13(7). Role of courts.
⇐13(8). Role of federal or statewide agencies and local committees.
⇐13(9). Time for desegregation.
⇐13(10). Justification for delay or failure.
⇐13(11). Step-by-step desegregation; transitional period.
⇐13(12). School location; districts and attendance zones.
⇐13(13). School pairing or clustering.
⇐13(14). Freedom of choice; transfer.
⇐13(15). Disregard of district boundaries.
⇐13(16). Private schools; state involvement and abandonment or nonsupport of public system.
⇐13(17). Particular schools; related facilities and activities.
⇐13(18). Actions.
⇐13(19). —— Evidence.
⇐13(20). —— Judgment and relief; retained jurisdiction.
⇐13(21). —— Review.
⇐14. State and county educational institutions.
⇐15. Application to school purposes of school lands and proceeds thereof.
⇐16. School funds.
⇐17. —— Creation and sources.
⇐18. —— Investment and administration.
⇐19. —— Apportionment and disposition.
⇐19(1). In general.
⇐19(2). Apportionment according to school attendance.
⇐19(3). Enumeration of children as basis of apportionment.
⇐19(4). Schools in cities.
⇐19(5). Appropriation of fund to insurance of school property.
⇐19(6). Illegal apportionment or disposition.
⇐20. Regulation and supervision of schools and educational institutions in general.

(B) CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION OF DISTRICTS.

⇐21. Nature and status as corporations.
⇐22. Constitutional and statutory provisions.
⇐23. Creation and organization.
⇐24. —— In general.
⇐24(1). In general.
⇐24(2). Attacking legality of organization.
⇐25. —— Independent and other districts in incorporated cities, towns, and villages.
⇐26. —— Rural independent districts and other special organizations.
⇐27. —— Proceedings for organization.
⇐28. De facto districts.
⇐29. Unorganized territory.
⇐30. Territorial extent and boundaries.
⇐31. Alteration and creation of new districts.
⇐32. —— Change of boundaries.
⇐33. —— Consolidation, and union districts.
⇐34. —— Division.
⇐35. —— Change of organization to or from independent district.
⇐36. —— Powers of boards or officers, and of courts.
⇐37. —— Proceedings in general.
⇐37(1). In general.
⇐37(2). Meetings and mode of action in general.
⇐37(3). Petition or consent.
⇐37(4). Notice.
⇐37(5). Records, orders, and reports.
⇐38. —— Submission of question to popular vote.
⇐39. —— Review of proceedings.
⇐40. —— Operation and effect.
⇐41. —— Adjustment of pre-existing rights and liabilities.
⇐41(1). Property and funds.
⇐41(2). Liabilities.
⇐41(3). Proceedings for apportionment of assets and liabilities.
⇐41(4). Actions on pre-existing liabilities.
⇐42. Formation of districts and annexation and detachment of territory for special purposes.
⇐42(1). In general.
⇐42(2). High school and graded school districts.
⇐43. Enumeration of children for school purposes.
⇐44. Dissolution.

(C) GOVERNMENT, OFFICERS, AND DISTRICT MEETINGS.

⇐45. Administration of school affairs in general.
⇐46. Constitutional and statutory provisions.
⇐47. State boards and officers.
⇐48. County boards and officers.
⇐48(1). Appointment or election.
⇐48(2). Eligibility and qualification.
⇐48(3). Term of office, vacancies, and holding over.
⇐48(4). Removal or suspension.
⇐48(5). Compensation.
⇐48(6). Powers, duties, and liabilities in general.
⇐48(7). Appeals from decisions.
⇐48(8). Criminal responsibility.
⇐49. Officers of towns as school officers.

[1413]

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⇐587 JUDGMENT

time of former action as it was at time of later action.—Id.

⇐580(1). In general.

N.Y. 1981. In deciding res judicata issues, Court of Appeals has moved to more pragmatic test, which sees claim or cause of action as coterminous with transaction regardless of number of substantive theories or variant forms of relief available to plaintiff.—Smith v. Russell Sage College, 445 N.Y.S.2d 68, 429 N.E.2d 746.

XIV. CONCLUSIVENESS OF ADJUDICATION.

(C) MATTERS CONCLUDED.

⇐724. —— In general.

D.C.S.C. 1981. Under collateral estoppel, once issue of fact or law necessary to first determination is decided, that decision may preclude relitigation of issue in later suit on different cause of action involving a party to first case.—Moore v. Bonner, 526 F.Supp. 143.

XVII. FOREIGN JUDGMENTS.

⇐828(3.10). Nature of state tribunal's proceedings.

D.C.Ill. 1981. Where in criminal case based on incident involving knife taken from student on school premises the student's motion to suppress the knife as product of illegal seizure was denied, collateral estoppel prevented relitigation of the Fourth Amendment issue in subsequent damages action charging dean of students and police officer with violating student's civil rights in connection with the search and seizure. 42 U.S.C.A. § 1983; U.S.C.A.Const.Amend. 4.—Reineman v. Valley View Community School Dist. No. 365-U, 527 F.Supp. 661.

LABOR RELATIONS

II. LABOR RELATIONS ACTS.

⇐51. —— Charitable, educational, and nonprofit enterprises.

Pa.Cmwlth. 1982. Where nonprofit institution created to serve educational needs of deaf and blind children was administered by private, self-perpetuating board of directors and where it had no power of eminent domain, subpoena or taxation, it was not a "state or political subdivision thereof," expressly excluded from jurisdiction of the National Labor Relations Board. National Labor Relations Act, §§ 1 et seq., 2(2) as amended 29 U.S.C.A. §§ 151 et seq., 152(2).—Western Pennsylvania School for Deaf v. Com., Pennsylvania Labor Relations Bd., 438 A.2d 1025.

III. LABOR ORGANIZATIONS.

⇐93. —— Adoption, amendment, and repeal.

Mo.App. 1981. Change in district teachers association's bylaws providing that membership in that national association would not be requirement for membership in district association until the membership requirement was granted by the constitution was not such a radical change requiring a vote of the membership in light of fact that change in bylaws did not conflict with district association's stated purposes, in passing bylaws in issue, district association was merely explicitly mandating policy it had always supported, and only real change took place was in affiliation from state association to national association which was not a radical change since the purposes of both the associations were virtually identical.—Missouri State Teachers Ass'n v. St. Louis Suburban Teachers Ass'n, 622 S.W.2d 745.

⇐94. —— Particular regulations.

Mo.App. 1981. In action involving dispute with respect to passage of bylaws of district teachers association, substantial evidence supported trial court's finding that articles of district association did not require it to operate as a district of state teacher association, and articles did not require the district association's bylaws to be consistent with requirement of the state association promulgates for its districts; thus, district association's bylaws requiring membership in the national teachers association and the state affiliate at the national association were not inconsistent with its articles of incorporation.—Missouri State Teachers Ass'n v. St. Louis Suburban Teachers Ass'n, 622 S.W.2d 745.

⇐142. —— Rights as between affiliate and general organization.

Mo.App. 1981. As parent organization, state teachers association did not have right to prevent district association from withdrawing from its membership in light of fact that state association disaffiliated with the district association, not vice-versa and even if district association did disaffiliate from the state association, state association had no right to prevent district's disaffiliation.—Missouri State Teachers Ass'n v. St. Louis Suburban Teachers Ass'n, 622 S.W.2d 745.

IV. COLLECTIVE BARGAINING.

(A) IN GENERAL.

⇐178. Subjects of bargaining.

D.C.Mich. 1981. Rights protected by Civil Rights Act of 1964 cannot be bargained away by an employer, a union or both. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.—Thompson v. Board of Ed. of Romeo Community Schools, 526 F.Supp. 1035.

Cal.App. 1981. Out-of-class preparation time, though uncompensated, is part of the obligation of a teacher's employment, and therefore the issue was negotiable under the Educational Employment Relations Act as related to hours of employment. West's Ann.Gov.Code §§ 3540-3549.3, 3543.5(c).—San Mateo City School Dist. v. Public Employment Relations Bd., 179 Cal. Rptr. 647.

Sections of contract proposed by exclusive negotiating agent for classified employees of school districts having to do with right of access to work areas, use of employer media for transmitting information concerning association matters, use of facilities at reasonable times, review of personnel files of employees, release time for employees who are state officers of the association to conduct association business, and orientation of employees concerning the agreement during regular working hours, were not negotiable under the Educational Employment Relations Act, because none of those topics was related in any substantial way to a matter "specifically enumerated" in section of the Act governing the scope of bargaining. West's Ann.Gov.Code §§ 3540-3549.3, 3543.2.—Id.

Article of contract proposed by association representing classified employees of school districts, regulating the designation, duties and compensation of association members wh representatives at their work loc able under the Educational E tions Act, because the issue is stantially related to grievance p Ann.Gov.Code §§ 3540-3549.3.

Sections of contract propose representing classified school d relating to certain fringe benefit under Educational Employment "related" to wages within mea the Act governing areas of nego Ann.Gov.Code §§ 3540-3549.3. Id.

Section of contract propose representing classified school d providing for a "regular prog awards for valuable suggestion complishments" was not nego Educational Employment Relati the issue raised was not suffi wages. West's Ann.Gov.Code 3543.2; West's Ann.Educ.Code

Section of contract propos school district employees' asso the employment of students study program in any position the rights of the association or was not negotiable under the ployment Relations Act, beca volved was not significantly re merated subject in section of t areas of negotiability. West §§ 3540-3549.3.—Id.

Section of contract proposed ees' association requiring emp vacant positions with an existin ing "minimum qualifications" w under the Educational Empl Act, because the issues involved or relate to evaluation proced limited extent of specifying h "minimum" qualifications we mined; rather, it manifested the conferring upon existing empl advantages without respect to e ifications. West's Ann.Gov.Cod —Id.

Section of contract proposed ees' association governing n classes of positions was not ne Educational Employment Relat the issue raised was not subst any topic enumerated in sectio erning areas of negotiability. Code §§ 3540-3549, 3543.2.—I

Section of contract of school ciation proposing that when a positions was reclassified, the i be entitled to serve in the new downward adjustment of a po demotion, and that abolition of of positions would be precluded agreement by the association w under the Educational Empl Act, because the issues involv stantially related to a topic enu of the Act governing areas of were comprehensively treated cation Code. West's Ann.Educ seq.; West's Ann.Gov.Code 3543.2.—Id.

Section of contract proposed ees' association governing layo ment was not negotiable unde Employment Relations Act, b

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Telephone: (313) 764-9492
FAX: (313) 747_-425
INTERNET: chris.eldred@um.cc.umich.edu

Educational Management
University of Oregon
1787 Agate Street
Eugene, OR 97403-5207
Telephone: (503) 346-5043
FAX: (503) 346-2334
INTERNET: ppiele@oregon.uoregon.edu

Elementary and Early Childhood Education
University of Illinois
805 West Pennsylvania Avenue
Urbana, IL 61801-4897
Telephone: (217) 333-1386
FAX: (217) 333-3767
INTERNET: ericeece@ux1.cso.uiuc.edu

Handicapped and Gifted Children
Council for Exceptional Children
1920 Association Drive
Reston, VA 22091-1589

Telephone: (703) 264-9474
FAX: (703) 264-9494
INTERNET: ericec@gwuvm.gwu.edu

Higher Education
The George Washington University
One Dupont Circle NW, Suite 630
Washington, DC 20036-1183
Telephone: (202) 296-2597
FAX: (202) 296-8379
INTERNET: judieric@gwuvm.gwu.edu

Information Resources
Syracuse University
Huntington Hall, Room 030
Syracuse, NY 13244-2340
Telephone: (315) 443-3640
FAX: (315) 443-5448
INTERNET: eric@suvm.acs.syr.edu

Junior Colleges
University of California at Los Angeles
Math-Sciences Building, Room 8118
405 Hilgard Avenue
Los Angeles, CA 90024-1564
Telephone: (310) 825-3931
FAX: (310) 206-8095
INTERNET: eeh3rie@mvs.oac.ucla.edu

Languages and Linguistics
Center for Applied Linguistics
1118 22nd Street NW
Washington, DC 20037-0037
Telephone: (202) 429-9551
FAX: (202) 659-5641
INTERNET: cal@guvax.georgetown.edu

Reading and Communication Skills
Indiana University
Smith Research Center, Suite 150
2805 East 10th Street
Bloomington, IN 47408-2698
Telephone: (812) 855-5847
(800) 759-4723
FAX: (812) 855-4220
INTERNET: londer@ucs.indiana.edu

Rural Education and Small Schools
Appalachia Educational Laboratory
1031 Quarrier Street
P.O. Box 1348
Charleston, WV 25325-1348
Telephone: (304) 347-0400
(800) 624-9120
FAX: (304) 347-0487
INTERNET: u56d9@wvnvm.wvnet.edu

Science, Mathematics, and Environmental Education
The Ohio State University

1200 Chambers Road, Room 310
Columbus, OH 43212-1792
Telephone: (614) 292-6717
FAX: (614) 292-0263
INTERNET: dpuglisi@magnus.acs.ohio-state.edu

Social Studies/Social Science Education
Indiana University
Social Studies Development Center
2805 East 10th Street, Suite 120
Bloomington, IN 47408-2698
Telephone: (812) 855-3838
FAX: (812) 855-0455
INTERNET: henson@ucs.indiana.edu

Teacher Education
American Association of Colleges for
Teacher Education
One Dupont Circle NW, Suite 610
Washington, DC 20036-2412
Telephone: (202) 293-2450
FAX: (202) 457-8095
INTERNET: ericsp@gwuvm.gwu.edu

Tests, Measurement, and Evaluation
American Institutes for Research
Washington Research Center
3333 K Street NW
Washington, DC 20007-3541
Telephone: (202) 342-5060
FAX: (202) 342-5033
INTERNET: nu_erictm@cuavax.dnet.cua.edu

Urban Education
Teachers College, Columbia University
Institute for Urban and Minority Education
Main Hall, Room 303, Box 40
525 West 120th Street
New York, NY 10027-9998
Telephone: (212) 678-3433
FAX: (212) 678-4048
INTERNET: lry2@cunixf.cc.columbia.ed

Adjunct Clearinghouses

Adjunct ERIC Clearinghouse for
Art Education
Indiana University
Social Studies Development Center
2805 East 10th Street, Suite 120
Bloomington, IN 47408-2698
Telephone: (812) 855-3838
FAX: (812) 855-0455
INTERNET: henson@ucs.indiana.edu

Adjunct ERIC Clearinghouse on Chapter 1
Chapter 1 Technical Assistance Center
2601 Fortune Circle East
One Park Fletcher Building, Suite 300-A
Indianapolis, IN 46241

Telephone: (317) 244-8160
(800) 456-2380
FAX: (317) 244-7386

Adjunct ERIC Clearinghouse on
Consumer Education
National Institute for Consumer Education
207 Rackham Building, West Circle Drive
Eastern Michigan University
Ypsilanti, MI 48197
Telephone: (313) 487-2292
FAX: (313) 487-7153
INTERNET: cse-bonner@emunix.emich.edu

Adjunct ERIC Clearinghouse on Literacy
Education for Limited-English-Proficient
Adults and Out-of-School Youth
Center for Applied Linguistics
1118 22nd Street NW
Washington, DC 20037
Telephone: (202) 429-9292
FAX: (202) 659-5641
INTERNET: cal@guvax.georgetown.edu

National Clearinghouse for
U.S.-Japan Studies
Indiana University
Social Studies Development Center
2805 East 10th Street, Suite 120
Bloomington, IN 47408-2698
Telephone: (812) 855-3838
FAX: (812) 855-0455
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ERIC Processing and Reference Facility
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FAX: (301) 948-3695
INTERNET: ericfac@gwuvm.gwu.edu

4041 North Central Avenue, Suite 700
Phoenix, AZ 85012-3397
Telephone: (602) 265-2651
(800) 279-ORYX
FAX: (602) 265-6250
(800) 279-4663
INTERNET: arhjb@asuvm.inre.asu.edu

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From: Joseph Ray Price <jrp4k@poe.acc.virginia.edu>
Subject: What kinds of Documents are in the ERIC Database (RIE)
To: jrp4k@virginia.edu
Date: Tue, 18 Apr 1995 17:07:37 -0400

ERIC Ready Reference #16
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Rank	PUB TYPE Code	Publication Type	Date Initiated	Accessns Coded by PUBTYPE	Pct. o Access Carryi PUBTYP
1	143	Research/Technical Reports	9/74	47,819	30.4
2	150	Conference Papers/Speeches (Single Papers)	9/74	45,439	28.9
3	141	Project/Program Descriptions	9/74	28,616	18.2
4	120	Opinion Papers/Essays	9/74	20,287	12.9
5	052	Teaching Guides (For Teacher)	7/79	17,762	11.3
6	055	Guides--Non Classroom (For Support Staff)	7/79	15,497	9.9
7	070	Information Analyses/State-of-the-Art Reports	9/74	12,750	8.1
8	142	Evaluative/Feasibility Reports	7/79	12,179	7.7
9	160	Tests, Measurement Instruments, Questionnaires	9/74	8,139	5.2
10	051	Instructional Materials (For Learner)	7/79	7,089	4.5
11	110	Numerical/Quantitative Data	9/74	6,449	4.1
12	131	Bibliographies	9/74	4,966	3.2
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17	140	Reports--General	7/79	2,586	1.6
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19	020	Collected Works	7/79	2,100	1.3
20	132	Directories/Catalogs	9/74	2,046	1.3
21	060	Historical Materials	9/74	1,728	1.1
22	050	Guides--General	9/74	1,621	1.0
23	080	Journal Articles	9/74	1,266	.8
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28	041	Doctoral Dissertations	7/79	466	.3
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30	171	Multilingual/Bilingual Materials	4/83	239	.1
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34	072	Book/Product Reviews	10/87	114	.0
35	101	Computer Programs	7/84	99	.0
36	102	Machine-Readable Data Files	10/87	79	.0
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